

Books and Reviews

Claude Emanuelli, *Les actions militaires de l'ONU et le droit international humanitaire*, Éditions Wilson & Lafleur Itée, Montreal, 1995, 112 pp.

Establishing the value of having undertaken a legal essay on UN military operations and international humanitarian law was certainly the easiest of the tasks accomplished by Prof. Emanuelli in his latest book. In fact, it can hardly be disputed that the 70,000 troops currently deployed under UN orders around the globe are often engaged in military action lacking a coherent legal framework insofar as international humanitarian law is concerned. It can only be regretted, and the author takes each opportunity to emphasize this, that there is no clear commitment to that law on the part of an organization which, although it has found it necessary to launch no fewer than fifteen new peacekeeping operations since 1988, has surprisingly limited itself to saying that the UN forces are bound by "the principles and the spirit of international humanitarian rules". Hence the need to decipher such sibylline statements and advance suggestions for reform.

Prof. Emanuelli's study does not claim to be either a documentary history of recent UN military operations or an exhaustive treatise on international humanitarian law. It aspires only to promote the recently revived discussion on the humanitarian constraints for UN action in restoring international peace and security. The work is divided into two main parts. The first explores the applicability of international humanitarian law to different types of UN military operations, while the second attempts to identify the specific rules of customary international humanitarian law applicable to such operations, and also to address the delicate issue of the international responsibility of the UN for violations of international humanitarian law committed in the course of them.

Part one of the study, regarding the applicability of international humanitarian law to UN military operations in general, begins with a most interesting analysis and classification of those operations, which continue to proliferate without always corresponding to either the traditional con-

cept of peacekeeping or the model of coercive action envisaged in Chapter VII of the UN Charter. Carefully avoiding a long narration of recent UN operations which would confuse the reader with often unnecessary details, Prof. Emanuelli distinguishes first between coercive and non-coercive military action. From an operational point of view, coercive action can be undertaken or authorized in order to (i) respond to an act of aggression, (ii) support military peacekeeping operations (the idea of so-called “peace enforcement”), and (iii) deal with situations *sui generis* such as the disastrous events in Rwanda or the political unrest in Haiti, which had been qualified by the UN Security Council as threats to peace and security although not involving an armed conflict.

Non-coercive military action, on the other hand, has to do with the traditional peacekeeping (blue helmet) type of operation. From a conceptual and legal point of view, peacekeeping aims at preventing the outbreak of hostilities, is subject to the explicit consent of both parties to the conflict, and is entrusted to lightly armed forces acting as subsidiary UN organs established under Articles 22 or 29 of the UN Charter. Two main activities come within the purview of long-practised peacekeeping: (i) missions by observers and involving unarmed civilian personnel (e.g. monitoring respect for a cease-fire, establishing a demarcation line, reporting on the withdrawal of troops pursuant to a peace agreement etc.), and (ii) missions by emergency forces comprising UN military contingents (e.g. constituting a buffer zone between former belligerents, verifying the observance of an armistice, inspecting the disengagement of troops, etc.).

With reference to the applicability of international humanitarian law to the various types of UN military operations, the author constructs his analysis around the following two premises: first, the United Nations, possessing a distinct legal personality from that of the member States, can be an autonomous subject of international humanitarian law; and second, the military operations undertaken or authorized by the United Nations pertain or in any case can be assimilated to international armed conflicts. Whether carried out directly by UN forces acting on behalf of the UN, or by armed contingents operating strictly under national command, these operations can either qualify *per se* as international armed conflicts (e.g. UN-authorized operation to repel an aggression — Kuwait type of situation), or be treated as such (e.g. peacekeepers resorting to armed force in self-defence), or finally result in the “internationalization” of a conflict which might originally have been internal (e.g. peace enforcement operation in the context of a civil strife — Somalia type of situation).

In the second part of his study, the author starts off with a reminder that the UN Organization as such has not become a party to any inter-

national instrument dealing with either the conduct of hostilities or the protection of victims of armed conflicts, and looks briefly into the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 in order to single out those customary rules and other general principles of international humanitarian law which could still be binding on the UN in its operations involving the use of armed force. By means of a rather lengthy analysis, Prof. Emanuelli reaffirms by and large the widely accepted view that most of the fundamental principles enunciated in basic humanitarian texts such as the 1907 Hague Regulations, the four Geneva Conventions or Additional Protocol I should be held applicable *per analogiam* to UN operations.

This conclusion relates as much to the rules concerning the conduct of hostilities (e.g. the principle according to which the right of belligerents to adopt means of injuring the enemy is not unlimited, the prohibition to resort to perfidious tactics, the prohibition to employ arms or methods of combat calculated to cause unnecessary suffering, the obligation to distinguish at all times between the civilian population and combatants as well as between civilian objects and military objectives, the obligation to give effective advance warning of attacks affecting the civilian population, the principle of proportionality in assessing an indiscriminate attack resulting in excessive collateral damage etc.) as to those regarding the protection of war victims (e.g. the obligation to treat humanely and care for the wounded, sick or shipwrecked, to respect medical personnel, medical establishments or hospital ships, the obligation after an engagement to search for the wounded and sick and to ensure honourable burial of the dead, the prohibition of reprisals against persons, buildings or equipment protected under the First and Second Geneva Conventions, etc.). Furthermore, most of the rules governing the treatment of prisoners of war and the protection of civilians that are contained in the Third and Fourth Geneva Conventions respectively seem to be equally applicable by analogy to UN military operations.

In contrast, and here again the traditional view is simply confirmed, the author considers that some other provisions of the Geneva Conventions (principally those relating to Protecting Powers, the criminal repression of grave breaches, or the administration of occupied territory) presuppose belligerent States and would thus clearly be unsuitable and inoperative in the event of military action undertaken by armed forces of an international organization.

Immediately after the detailed, somewhat technical description of the rules possibly applicable to UN operations, the reader may find it disap-

pointing that the international responsibility of the UN for violations of international humanitarian law by UN forces — a delicate issue that is truly worth scrutinizing — is treated succinctly at best. Indeed, the author contents himself with saying that in the Chapter VII type of operations the United Nations should bear exclusive responsibility for any illicit act by its subsidiary organs, whereas in cases of UN-authorized action the misconduct of a specific contingent should engage the individual responsibility of the national State. This aspect no doubt provides very fertile ground for further reflection, especially in the light of recent experiences such as the questionable attitude of the Dutch blue helmets during the Srebrenica massacre.¹

In his concluding remarks, Prof. Emanuelli stresses once more the continued ambiguity governing the interrelationship between UN military operations and the *corpus* of international humanitarian law, and reasons that the elaboration of an international convention which would specifically address the questions arising from the far from rare military “presence” of the United Nations in the world’s hot spots would be the most appropriate answer to the problem. Realizing, however, the poor prospects for such an undertaking in the foreseeable future, he would envisage as a second-best solution the adoption of a UN Security Council declaration, or the drafting of a UN military manual, explicitly setting out the humanitarian law principles and rules applicable to UN military operations, and proceeds to review the merits and shortcomings of those alternatives.

Finally, mention should be made of the 1994 *Convention on the Safety of United Nations and Associated Personnel* which is reproduced at the end of the work.² Also annexed is a selected (almost sketchy) bibliography and an analytical index.

¹ Certain authors, for instance, would support the idea of a double, or parallel, responsibility of the UN and the contingent-contributing State for illicit acts occurring in the context of peacekeeping operations. For some penetrating remarks on this, see L. Condorelli, “Le statut des forces de l’ONU et le droit international humanitaire” 78 *Rivista di diritto internazionale*, 1995, pp. 881-906, and M. Pérez González, “Les organisations internationales et le droit de la responsabilité”, 1988, pp. 85-86. Cf. T. Kamenov, “The origin of state and entity responsibility for violations of international humanitarian law in armed conflicts” in F. Kalshoven & Y. Sandoz (eds.), *Implementation of International Humanitarian Law*, 1989, pp.187-193.

² For a critical analysis of this instrument, see C. Emanuelli, “La Convention sur la sécurité du personnel des Nations Unies et du personnel associé: des rayons et des ombres”, 99 *R.G.D.I.P.*, 1995, pp. 849-880, and C. Bourloyannis-Vrailas, “The Convention on the Safety of United Nations and Associated Personnel”, 44 *I.C.L.Q.*, 1995, pp. 560-590.

Overall, the 88-page book offers clear and agreeable reading. It strikes a balance between in-depth legal analysis and generality, and as such it can only be recommended to any academic scholar or UN practitioner wishing to have a quick and updated reference work on a topic which is definitely destined to supplement the indexes of legal literature for many years to come. The book's principal merit consists neither in some original *conceptualization of the legal issues nor in any fresh ideas, but rather in the subtle and orderly way in which stock has been taken of this long-standing debate.*

One or two minor criticisms can be made: namely, the occasionally cursory, rather descriptive analysis of certain issues which risks leaving the well-versed reader unsatisfied; and the often elementary, not to say poor bibliographical support of various points of law and fact about which the work provides little information (however understandable it may appear to someone writing amidst a steady stream of the latest news, the monograph could only have gained in quality by avoiding the frequent references to daily newspapers and focusing instead on scholarly writings). Admittedly, the reason for this may only be the extreme topicality of the events covered in the study, and in this sense the author should already consider the possibility of updating his study by commenting on further developments such as the currently unfolding IFOR operation in former Yugoslavia, a truly pioneering experience which only confirms — if need be — that the maintenance of international peace involves *inter alia* an unrelenting exercise in legal resourcefulness.

Georges P. Politakis
Lecturer in Law
University of Geneva

A.P.V. Rogers, *Law on the Battlefield*, Manchester University Press, Manchester and New York, 1996, 170 pp.

This 170-page book meets most of the needs of the military commander in the field. It is about the legal rules that should be known and incorporated into the military decision-making process by all officers holding command responsibility, before they issue orders to their subor-